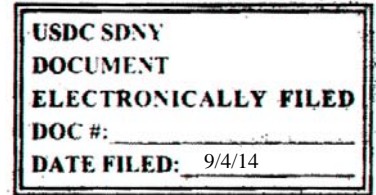


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
ELSA MARTINEZ,

Plaintiff,

-against-

CAROLYN W. COLVIN, ACTING
COMMISSIONER OF SOCIAL SECURITY,
Defendant.:
:
:
:
:
:
:
:
:
:
X

12 Civ. 05713 (LGS)

MEMORANDUM AND
ORDER

LORNA G. SCHOFIELD, District Judge:

Before the Court is the Report and Recommendation of Magistrate Judge Ronald L. Ellis (“Report”) (Docket No. 22), recommending that the Court grant in part and deny in part Plaintiff’s motion for judgment on the pleadings (“Plaintiff’s Motion”) (Docket No. 10) and grant Defendant’s motion to remand for further proceedings (“Defendant’s Motion”) (Docket No. 17).

Plaintiff filed the Complaint in this action on July 25, 2012 (Docket No. 1) seeking review of the decision of the Commissioner of Social Security (the “Decision”) denying her application for disability benefits. The case was referred to Magistrate Judge Ellis on August 6, 2012. Plaintiff’s Motion was filed on February 15, 2013, and seeks reversal of the Decision and remand to the Social Security Administration (“SSA”) for the limited purpose of calculating the amount of benefits due to her. Defendant’s Motion agrees that remand is necessary, but seeks remand for the broader purpose of further developing the record through additional administrative proceedings pursuant to the fourth sentence of 42 U.S.C. § 405(g).

Judge Ellis issued the Report on June 27, 2014. The Report concludes that reversal of the Decision is warranted on two grounds. First, the Report considers that the Decision fails to provide sufficient reasons for rejecting evidence establishing that Plaintiff suffered from physical

limitations that prevented her from performing sedentary work for the requisite number of hours. Second, the Report finds that the Decision fails to consider whether Plaintiff was a “borderline” case in applying the medical-vocational rules.¹ The Report finds, however, that there are inconsistencies in the record concerning Plaintiff’s physical abilities and accordingly recommends remand for further evidentiary proceedings and reconsideration of Plaintiff’s case.

A district court reviewing a magistrate judge’s report and recommendation “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). The district court “may adopt those portions of the report to which no ‘specific, written objection’ is made, as long as the factual and legal bases supporting the findings and conclusions set forth in those sections are not clearly erroneous or contrary to law.” *Adams v. New York State Dep’t of Educ.*, 855 F. Supp. 2d 205, 206 (S.D.N.Y. 2012) (citing Fed. R. Civ. P. 72(b); *Thomas v. Arn*, 474 U.S. 140, 149, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985)).

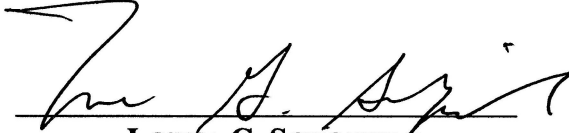
The Report, to which no objection was made, contains no clear error. Accordingly, the Report is ADOPTED in its entirety as the decision of the Court. This case is REMANDED to the SSA for a further hearing pursuant to the fourth sentence of 42 U.S.C. § 405(g).

¹ The medical-vocational rules set forth various factors, including age, for assessing whether an applicant is disabled. 20 C.F.R. Part 404, Subpart P, Appendix 2. In a “borderline” case, the administrative officer may consider using an older age category if a plaintiff is a few months or days away from falling into that category, if the older age category would result in a determination that the applicant is disabled. *See* 20 C.F.R. § 404.1563(b) (defining a “borderline situation”). Here, Plaintiff was just a few months shy of her 45th birthday, which could have placed her in an older age category under the medical-vocational rules.

The Clerk of Court is directed to close the motions at Docket Nos. 10 and 17 and to close this case.

SO ORDERED.

Dated: September 4, 2014
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE